THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE DR. JUSTICE G.YETHIRAJULU

WRIT PETITION Nos.

10440 of 1985, 10400 & 10401 of 1990,

13874, 13875, 13876, 13877, 13878 & 16220 of 1992,

4533 of 1995, 17338 of 2003 & 19534 of 2004

And

WRIT APPEAL Nos.

860, 948 & 1015 of 1989 and 560 of 1990

Date : 07-02-2006

Between:

Shivulla Kishtaiah & Others.

…..Petitioners/Appellants

and

The Joint Collector, Hyderabad District & Others.

.....Respondents

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THE HON'BLE DR. JUSTICE G.YETHIRAJULU

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860, 948 & 1015 of 1989 and 560 of 1990

COMMON JUDGMENT : (Per Hon'ble Sri Bilal Nazki, J)

All these writ petitions and writ appeals have been heard together, as they raise common questions of law and fact. However, this judgment will be confined only to those cases, which were subject matter of earlier litigation in this Court and also the subject matter of Civil Appeal Nos.13010 to 13019 of 1996 and 2692-93 of 1997 before the Supreme Court and decided by the Supreme Court by the judgment titled, ***Collector & others v . P.Mangamma and others.***

There are some disputes raised in some writ petitions between the original assignees and the purchasers. There are some disputes, which are *inter se* original assignees as well. Those writ petitions will be decided separately and this Court would confine itself to the questions, which were already decided in earlier writ appeals and writ petitions and which were subject matter of appeals before the Supreme Court.

Now, with this preface, the necessary facts of the case :--

Orders were passed by the District Collector, Hyderabad on 18.12.1984 and 17-07-1985 under Section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli (hereinafter referred to as 'the Tenancy Act'), cancelling the assignments made in favour of petitioners. These orders were challenged in various writ petitions. Initially, they were challenged in writ petition Nos.6120 of 1986 and 13097 of 1987. These writ petitions were decided by a learned Single Judge on 04.04.1989. The learned Single Judge remanded the matters back to the Collector after quashing the impugned orders. The petitioners were

directed to submit their objections before the authority within two months and the Collector was directed to decide the matter on merits in accordance with law. The order was challenged by way of writ appeals being writ appeal Nos.860, 948 & 1015 of 1989 and 560 of 1990. In the meantime, other writ petitions i.e. writ petition Nos.13874, 13875, 13876, 13877, 13878 and 16220 of 1992 were also filed and were pending. The writ appeals and the writ petitions mentioned, were taken up by a Division Bench of this Court together and were disposed of by a common judgment dated 25th of September 1995. Writ appeals were allowed. Learned Single Judge's order was set aside. The impugned orders of District Collector, dated 18.12.1984 and 17.07.1985 were quashed.

Writ petitions No.13874, 13875, 13876, 13877, 13878 and 16220 of 1992 had sought a direction from the Court that respondents should not interfere with their possession of the subject land. The learned Division Bench found that the authorities were interfering on the strength of an order, dated 18.12.1984, passed by the Collector and that order had been quashed. Directions were given to the Mandal Revenue Officer and the District Collector concerned, not to interfere with the possession of the petitioners in those petitions. The State took the matter to the Supreme Court by way of appeals, of which, a reference was given hereinabove. The Supreme Court has remanded the matter back to this Court. In between, we found that in other writ petitions, although all the petitioners are aggrieved of the order of the District Collector cancelling their assignments, but writ petitioners have disputes *inter se*.

As we have stated hereinabove, we will confine ourselves to the legality of the impugned orders as passed by the District Collector. If thereafter, any disputes remain between the parties, those can be heard and decided separately.

The orders that are impugned, purports to be the orders under Section 166-B of the Tenancy Act. The order dated 18.12.1984 starts

with these words; *"Notice to show cause under Section 166-B of A.P. (Telangana Area) Land Revenue Act, 1317 Fasli to cancel irregular assignments made in favour of the following assignees was issued and sent to Tahsildar, Golconda for service and return."* Then, the order noticed that the notices were returned un-served, as the particulars of those persons whose names had been mentioned in the order, were not available. Then, the order proceeds to give the grounds on which that order was being passed and finally, the Tahsildar, Golconda and the Deputy Director (Survey and Land Records), Hyderabad were requested to take action accordingly in Revenue and Survey Records for deletion of entries respectively and record the land as Government land.

The learned Single Judge, while deciding the matters earlier, was of the view that since the writ petitioners had not been given a proper notice, therefore, he asked the Collector to pass fresh orders, after considering the objections to the show cause notice and the petitioners were allowed to file their objections within two months. The Division Bench, however, came to the conclusion that after 31 years of assignment, power could not be exercised by the Collector under Section 166-B of the Tenancy Act. The Supreme Court, while remanding the matter, in para 8, noted,

> "We find that all the relevant aspects have not been considered by the Division Bench which confined its consideration only to the question of delay. The explanation now offered by the appellants and the stand regarding non-applicability of the Prohibition Act as raised by the respondents have not been considered by the learned Single Judge or the Division Bench. It would, therefore, be appropriate to remit the matter back to the High Court for a fresh consideration by the Division Bench. Normally, the question relating to valid initiation of action or otherwise is to be decided by the original authority which was the direction given by the learned Single Judge. But at this length of time we do not think it proper to send the matter back to the original authority. With a view to shorten litigation, we remit the matter back to the Division Bench as noted above. The parties shall be permitted to place all relevant facts in respect of their respective stands before the High Court which shall consider them in their proper prospective and render its decision. We make it clear that we are not expressing any opinion

on the merits of the case."

After remand of the matters, fresh additional affidavits and counter affidavits were filed. In the additional counter affidavit filed by the respondents in writ petition No.5653 of 1990 after the matter was decided by the Supreme Court, it was stated that during the course of enquiry into various land problems in Banjara Hills, Hyderabad, Government appointed a Special Deputy Collector and staff, by G.O.Ms.No.265, dated 28.01.1981, to identify and demarcate the Government and private lands in Banjara Hills, Hyderabad. During the course of enquiry, it was found that from out of Survey No.403, the then Tahsildar, Hyderabad West Taluk, had made irregular assignments with respect to the land measuring Ac.2,967-27 guntas under Special Loani Rules in the year 1953 in favour of 11 individuals. The assigned land was given for the purpose of cultivation, but it was rocky land and was unfit for cultivation, and as such, as a matter of fact, it was never cultivated. The assignees were not in possession of the land since the date of assignment. Therefore, the action was initiated under Section 166-B of the Tenancy Act. Notices to each assignee were issued and sent to Tahsildar for service, but the notices were returned un-served for want of correct address particulars. Then, a notice was published in local newspapers—Deccan Chronicle (English), Eenadu (Telugu) and Siasat (Urdu) on 23.10.1984, 02.11.1984 and 26.10.1984 respectively. By this notice, the original assignees were called upon to show cause within 15 days from the date of publication of the said notice, as to why the irregular assignment orders and Supplementary Sethwar issued and irregular entries made in Column Nos. 11 and 16 in Pahanis, should not be cancelled. The assignees did not file any objections. Then, in the counter affidavit, the alleged irregularities found, have been mentioned. Since no replies were received, orders were issued on 18.12.1984 and 17.07.1985, cancelling the assignments. These cancellation orders were published in some local newspapers. Thereafter, Women's Co-operative Housing

Society Limited filed writ petition No.6120 of 1986, which was decided on 04.04.1989. Thereafter, the matter went up to the Supreme Court. Then, the order of remand was passed. Further, it is stated in the counter affidavit that the Government has also filed a Land Grabbing Case being case No.268 of 1995 against Women's Co-operative Housing Society Limited, before the Special Court under Andhra Pradesh Land Grabbing (Prohibition) Act, 1982. The suit is in the trial stage. It is nowhere pleaded in this case, even in the additional counter affidavit filed, that the action taken against the petitioners, was taken under the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 (hereinafter referred to as 'the Prohibition Act).

After the affidavits were filed by the State and others, after the case had been remanded by the Supreme Court, we did not find from the pleadings that the Government had taken any action under the Prohibition Act. In order to be sure whether the impugned orders were passed under the Tenancy Act, or under the Prohibition Act, the case was listed on 11.11.2005. The learned Special Government Pleader was asked specifically as to whether they want to defend the impugned order on the strength of the Prohibition Act, or under Section 166-B of the Tenancy Act, 1317 Fasly. The learned Government Pleader fairly conceded that no action was taken by the Government in terms of the Prohibition Act, but the action has been taken only under Section 166-B of the Tenancy Act.

We have perused the copy of the petition filed before the Supreme Court, which is on record. In para 2, the following question was framed in the memo of leave to file appeal –

> *"The petitioners at the outset submit that a substantial question of law arises in the matter as to whether the District Collector has the suo-motu power to revise and cancel assignments under Section 166-B of the A.P. (T.A.) Land Revenue Act, 1907, and the provisions of the A.P.Assigned Lands (Prohibition of Transfer) Act, 1977 having regard to the facts and circumstances of the case and*

provisions of the Acts."

Since a ground had been taken before the Supreme Court that whether the Collector could have exercised *suo motu* jurisdiction under the Prohibition Act, the Supreme Court remanded the matter, as the High Court had not considered the impact of the Prohibition Act. In fact, the State had never taken recourse to the Prohibition Act, when the writ petitions were earlier decided. Even after remand from the Supreme Court, the State has not relied on the Prohibition Act and even the learned Special Government Pleader has conceded that no power was exercised by the Collector under the Prohibition Act. It will be profitable to again quote few lines from the Supreme Court orders, which has been quoted hereinabove –

> "The explanation now offered by the appellants and the stand regarding non-applicability of the Prohibition Act as raised by the respondents have not been considered by the learned Single Judge or the Division Bench. It would, therefore, be appropriate to remit the matter back to the High Court for a fresh consideration by the Division Bench."

In this view of the matter, we are not going into the question of applicability or non-applicability of the Prohibition Act.

Now, the only question remains is, whether the Collector could have exercised *suo motu* power under Section 166-B of the Tenancy Act, after more than 30 years.

The learned counsel for petitioners have again urged the same grounds, which they urged before this Court earlier, and the main ground being that no action could have been taken in terms of Section 166-B of the Tenancy Act, after a lapse of more than 30 years of the assignment. In this connection, we feel that the judgment of this Court, though was earlier the subject matter of appeal before the Supreme Court, but Supreme Court remanded the matter on the question of applicability of the Prohibition Act. Since that Act was not at all applied, as is conceded by the learned Government Pleader,

we have again to examine whether the revision could have been initiated after a period of 30 years.

The learned counsel for the parties referred to a judgment of the Supreme Court in **State of Gujarat v. Patel Raghav Natha** The Supreme Court, in this case, was considering the power of the Commissioner to revise an order under Section 65 of the Bombay Land Revenue Act, in the light of the fact that Section 211 of that Act did not prescribe any period of limitation for the purpose of initiating a revision. The Supreme Court said that even though there was no limitation prescribed under Section 211 of the Act, the power of Commissioner to revise an order must be exercised within reasonable time and the length of reasonable time must be determined by the facts of the case and the nature of the order, which was being revised.

Second judgment, on which reliance has been placed is, **A.Kodanda Rao v. Government of A.P.,** which is of a Division Bench of this Court. Similar view was taken in another Division Bench judgment of this Court in **K.Venkata Reddy v. The Director of Settlements, Survey and Land Records, Hyderabad**.

Another judgment, on which reliance has been placed is **Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K.Suresh Reddy**. This is a judgment out of a case, which was decided by the Supreme Court in the year 2003 i.e. after this Court decided the matter earlier in 1995. This judgment has taken note of various previous judgments also and according to us, this judgment settles the controversy. Therefore, we would like to refer to this judgment somewhat in detail. The Supreme Court framed the following question for consideration :--

> *"Whether the Collector can exercise suo motu power under sub-section (4) of Section 50-B of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 at any time or such power is to be exercised within a reasonable time."*

Supreme Court said,

> *"Exercise of suo motu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as the Land Ceiling Act). Hence, it appears that without stating from what date the period of limitation starts and within what period the suo motu power is to be exercised, in sub-section (4) of Section 50-B of the Act, the words "at any time" are used so that the suo motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of the parties. Use of the words "at any time" in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary meaning of the words "at any time", the suo motu power under sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo motu power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation."*

If the present case is seen in the light of this judgment, one can safely say that the respondents could have not exercised their power after 30 years. The original assignment was made in the year 1953. Large number of third parties have acquired rights and interest in the lands during the passage of 30 years. One of the appellants is a Society, which purchased the lands from the original allottees. The layout plan was submitted by the Society to the Minicipal Corporation,

which was approved by the Municipal Corporation. Betterment charges were paid to the Corporation and this development of sanctioning the plan happened in the year 1969. Thereafter, the plots were allotted to the members of the Society, who appeared to be bonafide purchasers. Those purchasers have constructed buildings in their respective plots, investing huge sums of money and they are living in those houses. Even in one case, we were shown that the original pattedar sold land to a former Chief Justice of this Court and the Chief Justice sold it to another party. Now, if a person purchases the land from a former Chief Justice of the High Court, it would be reasonable for the purchaser to believe that the Chief Justice, who was selling the land, had the title over the land. In these circumstances, since the third parties' interests got involved during the period of 30 years, therefore, in our view, the Government could not have exercised the power under Section 166-B of the Tenancy Act, after a lapse of 30 years.

The learned Government Pleader has placed reliance on various judgments, which, we do not feel, are relevant for the purpose of the present controversy.

The first judgment is **Government of A.P. v. Gudepu Sailoo**. This judgment is not relevant for the purpose of present case, as the question relating to exercise of power of revision was not a question before the Supreme Court in this judgment. It appears that the proceedings were initiated under Section 166-B of the Tenancy Act. A Division Bench of High Court gave the following directions, as quoted in paragraph 15 of this judgment –

> *"15. We do not find any infirmity in the reasoning of the learned Single Judge. In any event, the District Revenue Officer was vested with the power under Section 166-B and in exercise of such a power he passed an order recording therein that it will neither be fair nor proper to reopen the issue of assignment which took place three decades back by invoking the provisions of Section 166-B of the A.P. (TA) Land Revenue Act, 1317 Fasli. We also record our concurrence with the observations of the learned Single Judge and record that no exception can be taken to the*

order of the District Revenue Officer and the order under appeal cannot be said to be suffering from any infirmity. There is no merit in the appeal. As such, this appeal fails and is dismissed. No order as to costs."

Then in para 16, the Supreme Court held –

"16. We cannot subscribe to the view expressed by the High Court insofar as the order passed by the District Revenue Officer is concerned. Since a mandamus was issued to the Collector, Rangareddy District, to hear and dispose of the explanation, which was required to be submitted by the respondents in reply to the show-cause notice issued to them, the District Revenue Officer had no jurisdiction to consider the matter in violation of the direction of the High Court. As a matter of fact, the explanation to the show-cause notice had to be submitted before the Collector and the Collector alone had to consider and take a final decision in the matter. The action initiated by the Collector and the ratification of his order by the State Government are matters which should have been allowed to take final shape instead of being challenged at the interlocutory stage by the respondents. That being so, there is no necessity of going into the merits of the submissions made by the learned counsel for the parties with regard to the provisions of Sections 166-B and 166-C of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli."

The Supreme Court did not go into the question as to whether the power could be exercised under Section 166-B of the Tenancy Act, after 30 years.

The second judgment relied upon by the learned Government Pleader is **S.L.Kapoor v. Jagmohan**. In fact, this judgment is a judgment, which supports the case of the petitioners, because we have seen hereinabove that there were many persons, who had interest in the property, including the original assignees, who were not given a proper notice. The Supreme Court held –

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-

observance of natural justice is itself prejudice to any man and proof of prejudice independently of poroof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

The third judgment is in the case of **Pidathala Shyam Rao**. In this case, a learned Single Judge of the High Court distinguished earlier judgments because of the peculiar facts of that case. In that case, the assignment had been cancelled on the ground that some persons had secured land on the ground that they were landless poor.

Another judgment relied upon by the learned Government Pleader is in the case of **Gudepu Sailoo v. Government of A.P.** The same principle was followed that, though there was no limitation prescribed, but the power should be exercised in a reasonable period of time and reasonableness of time would depend on the facts of each case.

The next judgment is in the case of **G.Ramegowda v. Spl. Land Acquisition Officer, Bangalore**. This is a judgment on Section 5 of the Limitation Act, where the Supreme Court held that when Government files appeals, Courts should have regard to the normal procedural delays in governmental actions. We do not consider that this judgment is relevant for the present case.

Another judgment relied upon by the learned Government Pleader is **Deepal Girishbhai Soni v. United India Insurance Co. Ltd., Baroda**. This judgment has been referred for the purpose of canvassing that principle of purposive construction should be adhered to by the Courts. There is no quarrel with the principle laid

down by the Supreme Court. But, in our view, it is not relevant for the present controversy.

The last judgment relied upon by the learned Government Pleader is in the case of **Santa Singh v. The State of Punjab**. It also relates to the principles laid down by the Supreme Court earlier.

For these reasons, we allow the writ petitions and writ appeals to the extent of quashing orders dated 18.12.1984 and 17.7.1985.

Other controversies and inter se disputes between the parties shall be decided separately and the matters may be listed before the appropriate Bench.

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(BILAL NAZKI, J)

07-2-2006

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(Dr.G.YETHIRAJULU, J)

N.B:-

L.R.copies to be marked.

(B/o)

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